IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 1799 of 2000

to

FIRST APPEALNo 1818 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

and

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SPECIAL LAND ACQUISITION OFFICER

Versus

PATEL RANCHHODBHAI BHOLIDAS

Appearance:

MR A.D. OZA, GOVERNMENT PLEADER for Appellant

MR J.M. PATEL FOR MR AJ PATEL for Respondents - Claimants

CORAM : MR.JUSTICE M.R.CALLA

and

MR.JUSTICE J.R.VORA

Date of decision: 16/01/2001

COMMON ORAL JUDGEMENT (Per : MR.JUSTICE M.R.CALLA)

1. All these 20 First Appeals filed under Section 54 of the Land Acquisition Act, 1894 read with Section 96 of the Civil Procedure Code, 1908, are directed against the common judgment and order passed by the Assistant Judge, Mehsana, in Land Acquisition Reference Case Nos. 983 of 1994 to 993 of 1994, 1132 of 1994 to 1139 of 1994 and 1796 of 1996, the main Land Acquisition Reference being 983 of 1994, decided on 19th of January, 2000, whereby he has determined the market value of the lands at the rate of Rs. 48 per sq. meter, wherein with regard to land bearing Survey No.155 situated in the sim of village Ramnagar the entitlement is Rs.58 per sq. meter because there was a well.

2. This order has been challenged by the Special Land Acquisition Officer in these Appeals on the ground that the rate of Rs. 48 per sq.meter is on higher side.

3. The lands of village Ramnagar were acquired for Narmada Canal Project and the Land Acquisition Officer had determined the rate of the land at Rs. 3.90 per sq. meter. The claimants filed References claiming Rs. 100 per sq. meter and the Reference Court increased the rate to Rs. 48 per sq. meter in all the cases, except in the case of the land of Survey No. 155 situated in the sim of village Ramnagar, wherein there is a well and for that purpose in respect of this land of Survey No. 155, the rate was determined at Rs.58 per sq.meter by the Reference Court. In these matters, the Notification u/s 4 of the Act were issued on 9th December, 1990. The Government Pleader has argued that in case of village Piyaj, Taluka Kalol, which was the subject matter of lands in First Appeals No. 5356 of 1997 to 5364 of 1997, the High Court vide its order dated 15th December, 1998, had awarded the compensation at the rate of Rs. 35 per sq.meter only, but in the present case, the compensation has been granted at the rate of Rs. 48 per Sq. meter. An objection has been raised by Mr. Patel that the order passed in the case of Piyaj had not been placed before the Reference Court for drawing any analogy with regard to the lands in question and, therefore, there is no material available on record which could have been otherwise brought on record by the claimants to show the difference between the lands of village Piyaj which were acquired and the lands of village Ramnagar. Mr.Patel has submitted that the High Court's judgment could be cited

on the question of law but the Award as such could not be cited as a part of evidence unless it has been placed on record before the Reference Court and opportunity be given to the claimants to meet the case as to what has been the difference between the two different types of lands and, therefore, in the case of Piyaj the rate was determined at Rs.35 per sq.meter, the same cannot be applied to the case of village Ramnagar, which was acquired for the Narmada Project. In absence of any material on record, the rate of Rs. 35 per sq. meter cannot be applied and invoked in the facts and circumstances of the present case with regard to the lands of Ramnagar for which the compensation has been granted to be paid at the rate of Rs. 48 per sq. meter. There is no dispute that the land owners in the present case are different from the land owners of village Ramnagar, Taluka Kalol, for the Narmada Main Canal and for this purpose the Notification was issued u/s 4 on 19th July, 1990. These cases are found to be identical to such matters which have been decided in Land Acquisition Reference Case Nos. 3165 of 1993 to 3173 of 1993 i.e. Exh.51, whereby group of 9 references was decided by a common order, in all these cases the rate was determined at Rs. 48 per sq. meter. Against this decision dated 4th September, 1999, the First Appeals No. 570 of 2000 to 578 of 2000 were preferred before the High Court, and all these Appeals were dismissed on 19th Deccember, 2000.

4. Having heard the learned Govt. Pleader for the Appellant and Mr. Patel for the respondents claimants, we find that the analogy be drawn from the Land Acquisition Reference No 3165 of 1993 to 3173 of 1993, against which the Appeals were dismissed by this Court on 19th December, 2000 and in all these cases, rate was fixed at Rs. 48 per sq. meter. We, therefore find that the amount of compensation at the rate of Rs. 48 per sq. meter is neither unreasonable nor it can be said that there is no material to form such an opinion and looking to the previous awards, as has been relied upon, no mistake or irregularity can be said to have been committed by granting the compensation at the rate of Rs. 48 per sq.meter. However, in case of Appeal No. 1814 of 2000, we find that the market value of the land has been fixed at the rate of Rs. 58 per sq. meter instead of Rs. 48 per sq. meter on the ground that there was a well in Survey No. 155. In our opinion, once the land is an irrigated land, there is no question of fixing higher rate for the purpose of compensation. In any case, we need not go into details so far as this matter is concerned because Mr. J.M. Patel, has submitted that

with regard to the lands of survey No. 155, for which the rate has been fixed at Rs. 58, the claimants shall not press the compensation at the rate of Rs. 58 and they would be satisfied with Rs. 48 per sq. meter.

5. As a result, the Appeals No. 1799 to 1813 and 1815 to 1818 of 2000 are hereby dismissed. So far as Appeal No. 1814 of 2000 is concerned, the same is partly allowed and the rate is reduced to Rs. 48 per sq. meter instead of Rs. 58 per sq. meter. Thus, the First Appeals No. 1799 of to 1813 of 2000 and 1815 to 1818 of 2000 are hereby dismissed but Appeal No. 1814 of 2000 is partly allowed as above to the extent that the compensation shall be payable only at the rate of Rs. 48 per sq. meter instead of Rs. 58 per sq. meter. Rest of the order as has been passed by the Reference Could would remain intact.

6. Since main Appeals No. 1799 of 2000 to 1813 of 2000 and 1815 to 1818 of 2000 have been dismissed and Appeal No. 1814 of 2000 has been partly allowed, there is no question of any stay in Civil Applications No. 636 to 655, the same are accordingly rejected.

(M.R. Calla, J.)

(J.R. Vora, J.)

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